

**ASHFORD – SCHAEEL LLC**

Courtney A. Schael, Esq. (CS-1295)  
100 Quimby Street, Suite 1  
Westfield, NJ 07090  
(908) 232-5566 (Telephone)  
(908) 728-3113 (Facsimile)  
*Counsel to Creditor ShopperTrak RCT LLC*

**GODFREY & KAHN, S.C.**

Nicholas Hahn, Esq.  
200 South Washington Street, Suite 100  
Green Bay, WI 54301-4298  
(920) 432-9300 (Telephone)  
(920) 436-7988 (Facsimile)  
*Counsel to Creditor ShopperTrak RCT LLC*

**UNITED STATES BANKRUPTCY DISTRICT COURT  
DISTRICT OF NEW JERSEY**

In re:

BED BATH & BEYOND INC, *et al.*,  
  
Debtors.

Chapter 11

Case No. 23-13359 (VFP)

(Jointly Administered)

**LIMITED OBJECTION OF SHOPPERTRAK RCT LLC TO NOTICE TO  
CONTRACT PARTIES TO POTENTIALLY ASSUMED EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES**

ShopperTrak RCT LLC (“**ShopperTrak**”), contract counter-party to the Debtor, Bed Bath & Beyond Inc. (the “**Debtor**”), hereby objects (the “**Objection**”) to the Debtor’s *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Dkt. No. 714] (the “**Notice**”). In support of its Objection ShopperTrak states as follows:

### **FACTUAL BACKGROUND**

1. ShopperTrak and the Debtor are parties to a Purchase and Services Agreement, dated August 16, 2019, by and between ShopperTrak and the Debtor, under which ShopperTrak provides retail analytics to the Debtor and its affiliates, including Harmon Stores, Inc. and Buy Buy Baby, Inc. (the “**Shoppertrak Agreement**”).

2. According to ShopperTrak’s records, the Debtors currently owe ShopperTrak no less than \$458,710.41 for goods and services rendered to the Debtors and their affiliates pursuant to the ShopperTrak Agreement. ShopperTrak continues to perform under the ShopperTrak Agreement and the Debtors continue to accrue additional amounts owed to ShopperTrak for post-petition goods and services.

3. The Notice states that ShopperTrak and Debtor, Bed Bath & Beyond, Inc., are parties to a “ShopperTrak Addendum for Renewal & Market Intelligence Information.” (*See* Notice at Exhibit A, Notice at line 1731). The Debtor’s stated cure amount in the Notice for this contract is \$1,337.50.

### **OBJECTION TO CURE AMOUNTS**

4. Under 11 U.S.C. § 365(b)(1)(A), the debtor-in-possession may not assume and assign an executory contract unless the debtor-in-possession “cures, or provides adequate assurance that [it] will cure” any monetary defaults under the contract. *See Spyglass Media Group, LLC v. Bruce Cohen Productions, et al., (In re Weinstein Company Holdings LLC)*, 997 F.3d 497, 501 (3d Cir. 2021) (“To assume an executory contract, a debtor must cure existing defaults and put the contract in the same place as if the bankruptcy never happened.”).

5. The Debtor's identification of the contract in the Notice is unclear and insufficient for ShopperTrak to verify that the Debtor is attempting to identify the ShopperTrak Agreement for possible assumption and assignment pursuant to a sale.

6. ShopperTrak objects to the assumption and assignment of the ShopperTrak Agreement unless the Debtors cure all monetary defaults under the ShopperTrak Agreement which are currently no less than \$458,710.41.

**RESERVATION OF RIGHTS AND NOTICE**

7. ShopperTrak reserves its right to supplement, amend or modify this Objection, including, the cure amount to include additional amounts that may be or become due, and further reserves any other rights that it may have under applicable law. Nothing herein is intended to be a waiver by ShopperTrak of any right, objection, argument, claim, or defense with respect to any matter, all of which are hereby expressly reserved.

WHEREFORE, ShopperTrak respectfully requests that the Court not permit the assumption and/or assignment of the ShopperTrak Agreement, until the Debtors provide for payment of the full cure amount, which is no less than \$458,710.41, and grant such other and further relief as is just and equitable.

Respectfully submitted,

/s/ Courtney A. Schael  
Courtney A. Schael (CS-1295)  
ASHFORD – SCHAEEL LLC  
Courtney A. Schael, Esq.  
100 Quimby Street, Suite 1  
Westfield, NJ 07090  
(908) 232-5566 (Telephone)  
(908) 728-3113 (Facsimile)  
cschael@ashfordnjlaw.com

*Counsel to Creditor ShopperTrak RCT LLC*